

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES C. ASMUS,

Defendant.

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Case No. 8:08CR195

**ORDER**

This case came before the Court on a Petition for Action on Conditions of Pretrial Release (#60). On November 24, 2008 Pretrial Services Officer Todd Beacom submitted a Petition for Action on Conditions of Pretrial Release alleging that Defendant had violated conditions of release as follows:

7. The defendant shall:

(n) Not possess or use a narcotic drug or other controlled substances defined in 21 U.S. C. § 802 unless prescribed by a licensed medical practitioner.

(o) Defendant shall submit to any method of testing at his/her own expense as required by the officer for determining whether the defendant is using a prohibited substance. Such methods may be used with random frequency and may include urine testing, the wearing of a sweat patch, blood tests, and/or a remote alcohol testing system. Defendant shall not obstruct or attempt to obstruct or tamper in any fashion with the efficiency and accuracy of any substance testing equipment, nor submit samples of body fluids which are not his/her own, nor otherwise adulterate any samples submitted for testing. All collections of fluids for testing shall be at the defendant's expense, payable at the time of collection.

(q) Obtain a substance abuse treatment evaluation and participate in a program of inpatient or outpatient substance abuse therapy and counseling if deemed advisable by the supervising officer; pay all or a portion of the treatment in an amount and on a schedule to be arranged by the supervising officer. **Modified on October 24, 2008** ..... to include outpatient treatment through The Discovery Center.

*The defendant admitted to using methamphetamine on October 25, 2008, November 8, 15, & 20, 2008. The defendant submitted urine tests on November 13 & 20, 2008 which tested positive for methamphetamine. [Violation of Condition 7(n)]*

*The defendant failed to report for random drug tests at Catholic Charities on October 30, 2008 and November 7 & 19, 2008. The defendant failed to report to the Pretrial Services office as directed to submit urine specimens on October 31, 2008, November 3 & 10, 2008. [Violation of Condition 7(o)]*

*The defendant was discharged from The Discovery Center outpatient treatment program on November 21, 2008. [Violation of Modified Condition (q)]*

A warrant for Defendant's arrest was issued.

Defendant appeared before the undersigned magistrate on November 26, 2008. Horacio Wheelock, Assistant Federal Public Defender, represented Defendant. Douglas Semisch, Assistant United States Attorney, represented the Government. After being advised of the nature of the allegations, rights, and the consequences if the allegations were found to be true, Defendant admitted the allegations. The Court took judicial notice of the amended Memorandum of Pretrial Services Officer Todd Beacom dated November 26, 2008. The Court finds the allegations set out in the petition are generally true and finds the Defendant violated the conditions of release.

After providing both parties an opportunity for allocution as to disposition and considering the report of Pretrial Services, I find the Order Setting Conditions of Release (#12) should be revoked. I find Defendant is unlikely to abide by conditions of release. I find that there is no condition or combinations of conditions that would reasonably assure the safety of the community if Defendant were to be released upon conditions.

**IT IS ORDERED:**

1. The Petition for Action on Conditions of Pretrial Release (#60) is granted;
2. The May 27, 2008 Order Setting Conditions of Release (#12) is hereby revoked;

and

3. Defendant is committed to the custody of the Attorney General or his designated representative for confinement in a correctional facility separate, to the extent practicable, from persons awaiting or serving sentence or being held in custody pending appeal. Defendant shall be afforded a reasonable opportunity for private consultation with defense counsel. On order of the Court of the United States or on the request of an attorney for the Government, the person in charge of the correctional facility shall deliver Defendant to the United States Marshal for purpose of an appearance in connection with a court proceeding.

Dated this 26<sup>th</sup> day of November 2008.

BY THE COURT:

s/ F. A. Gossett  
United States Magistrate Judge